

**AGREEMENT
BETWEEN
THE GOVERNMENT
OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF CYPRUS
CONCERNING COOPERATION TO SUPPRESS THE
PROLIFERATION OF WEAPONS OF MASS DESTRUCTION,
THEIR DELIVERY SYSTEMS,
AND RELATED MATERIALS BY SEA**

The Government of the United States of America and the Government of the Republic of Cyprus, (hereinafter, "the Parties");

Deeply concerned about the proliferation of weapons of mass destruction (WMD), their delivery systems, and related materials, particularly by sea, as well as the risk that these may fall into the hands of terrorists;

Recalling the 31 January 1992 United Nations Security Council Presidential statement that proliferation of all WMD constitutes a threat to international peace and security, and underlines the need for Member States of the UN to prevent proliferation;

Also recalling United Nations Security Council Resolution 1540 (2004), which calls on all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;

Recalling further the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris 13 January 1993; the Treaty on Nonproliferation of Nuclear Weapons, done at Washington, London and Moscow 1 July 1968; and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London and Moscow 10 April 1972;

Recalling Article 6 of the Convention on the High Seas and **recalling** the importance of customary international law of the sea, as reflected in the 1982 United Nations Convention on the Law of the Sea, particularly the principles of international law that the sovereignty of a coastal State extends, beyond its land territory and internal waters, to an adjacent belt of sea, described as the territorial sea, and that in a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary, *inter alia*, to prevent the infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;

Further recalling the International Ship and Port Facility Security Code, adopted on 12 December 2002 by the Conference of the Contracting Governments of the International Convention for the Safety of Life at Sea, 1974, as amended;

Acknowledging the widespread consensus that proliferation and terrorism seriously threaten international peace and security;

Convinced that trafficking in these items by States and non-state actors of proliferation concern must be stopped;

Guided by the Statement of Interdiction Principles for the Proliferation Security Initiative;

Inspired by the efforts of the International Maritime Organization to improve the effectiveness of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome 10 March 1988;

Committed to cooperation to stop the flow by sea of WMD, their delivery systems, and related materials to or from States or non-state actors of proliferation concern; and

Also recalling all relevant United Nations resolutions regarding Cyprus, including resolutions 541 (1983) and 550 (1984);

Have agreed as follows: *

Article 1
Definitions

In this Agreement, unless the context otherwise requires:

1. "Proliferation by sea" means the transportation by vessel of weapons of mass destruction, their delivery systems, and related materials to or from States or non-state actors of proliferation concern.
2. "Weapons of mass destruction" (WMD) means nuclear, chemical, biological and radiological weapons.
3. "Related materials" means materials, equipment and technology, of whatever nature or type, that are related to and destined for use in the development, production, utilization or delivery of WMD.
4. "Items of proliferation concern" means WMD, their delivery systems, and related materials.
5. "States or non-state actors of proliferation concern" means those countries or entities that should be subject to interdiction activities because they are or are believed to be engaged in: (1) efforts to develop or acquire WMD or their delivery systems; or (2) trafficking (either selling, receiving, or facilitating) of WMD, their delivery systems, or related materials.
6. "Security Force Officials" means:
 - a. for the United States, uniformed or otherwise clearly identifiable members of the United States Coast Guard and the United States Navy, who may be accompanied by clearly identifiable law enforcement officials of the Departments of Homeland Security and Justice, and other clearly identifiable officials duly authorized by the Government of the United States of America and notified to the Competent Authority of the Government of the Republic of Cyprus; and
 - b. for the Republic of Cyprus, uniformed or otherwise clearly identifiable members of the armed forces or law enforcement authorities of the Navy Command of the National Guard, the Cyprus Police (including the Cyprus Port and Marine Police), and the Customs and Excise Department, duly authorized by the Government of the Republic of Cyprus and notified to the Competent Authority of the United States.
7. "Security Force vessels" means warships and other vessels of the Parties, or of third States as may be authorized in accordance with Article 7 of this Agreement, on which Security Force Officials of either or both Parties may be embarked, clearly marked and identifiable as being on government service and authorized to that effect, including any vessel and aircraft embarked on or supporting such vessels.

8. "Suspect vessel" means a vessel used for commercial or private purposes in respect of which there are reasonable grounds to suspect it is engaged in proliferation by sea, as determined pursuant to Article 4 of this Agreement.

9. "International waters" means all parts of the sea not included in the territorial sea, internal waters and archipelagic waters of a State, consistent with international law.

10. "Competent Authority" means for the United States, the Commandant of the United States Coast Guard (including any officials designated by the Commandant to perform such functions), and for the Republic of Cyprus, the Ministry of Foreign Affairs (including any officials designated by the Ministry to perform such functions).

Article 2

Object and Purpose of Agreement

1. The object and purpose of this Agreement is to promote cooperation between the Parties to enable them to prevent the transportation by sea of items of proliferation concern.

2. The Parties shall carry out their obligations and responsibilities under this Agreement in a manner consistent with the principles of international law pertaining to the sovereign equality and territorial integrity of States, including the sovereignty, independence and territorial integrity of the Republic of Cyprus, and on the basis of the principle of reciprocity.

3. The Parties shall cooperate to the fullest extent possible, subject to the availability of resources and in compliance with their respective laws.

Article 3

Cases of Suspect Vessels

1. Subject to paragraph 2 of this Article, operations to suppress proliferation by sea pursuant to this Agreement shall be carried out only against suspect vessels:

- a. having the nationality of one of the Parties and entitled to fly its flag, or
- b. registered under the law of one of the Parties under a bareboat charter, notwithstanding an underlying registration in another State not Party to this Agreement, or
- c. without nationality or assimilated to vessels without nationality.

2. Such operations shall not be carried out under this Agreement against vessels registered under the law of one of the Parties while bareboat chartered in another State not party to this Agreement.

Article 4 Operations in International Waters

1. Authority to Board Suspect Vessels. Whenever the Security Force Officials of one Party ("the requesting Party") encounter a suspect vessel claiming nationality in the other Party ("the requested Party") located in international waters, the requesting Party may request through the Competent Authority of the requested Party, that it:
 - a. confirm the claim of nationality of the suspect vessel; and
 - b. if nationality is confirmed:
 - i. authorize the boarding and search of the suspect vessel, cargo, and persons found on board by Security Force Officials of the requesting Party; and
 - ii. if evidence of proliferation is found, authorize the Security Force Officials of the requesting Party to detain the vessel, as well as items and persons on board, pending instructions conveyed through the Competent Authority of the requested Party as to the actions the requesting Party is permitted to take concerning such items, persons and vessels.

Each authorization to act shall be in writing between the Competent Authorities. Nevertheless, in urgent circumstances, an authorization to act may be granted orally, on behalf of the Republic of Cyprus, by the Minister of Foreign Affairs, the Ambassador to the United States of America or the Permanent Secretary of the Ministry of Foreign Affairs, of the Republic of Cyprus, and by the Competent Authority of the United States of America on behalf of the United States of America. An oral authorization to act shall be confirmed in writing forthwith by the Competent Authority.

2. Contents of Requests. Each request should be in writing and contain the name of the suspect vessel, sufficiently reliable information forming the basis for the suspicion, the geographic position of the vessel, the IMO number if available, the homeport, the port of origin and destination, and any other identifying information. Nevertheless, in urgent circumstances, a request may be made orally, but shall be confirmed in writing forthwith. An oral request made by the United States of America in urgent circumstances shall be directed to the Minister of Foreign Affairs, the Ambassador to the United States of America or the Permanent Secretary of the Ministry of Foreign Affairs, of the Republic of Cyprus. An oral request made by the Republic of Cyprus in urgent circumstances shall be directed to the Competent Authority of the United States of America.

The requested Party shall acknowledge to the Competent Authority of the requesting Party in writing, by e-mail, or by facsimile its receipt of any written or urgent oral request immediately upon receiving it.

3. Responding to Requests

- a. If the nationality is verified and the requested Party is satisfied with the basis for suspicion that the vessel is a suspect vessel, and that the information provided by the requesting Party is sufficiently reliable, the requested Party may:
 - i. decide to conduct the boarding and search with its own Security Force Officials;
 - ii. authorize the boarding and search by the Security Force Officials of the requesting Party, subject to conditions if deemed appropriate;
 - iii. decide to conduct the boarding and search together with the requesting Party; or
 - iv. nevertheless, deny permission to board and search.
- b. The requested Party shall answer through its Competent Authority requests made for the verification of nationality and authorization to board within four hours of its acknowledgment of the receipt of such requests.
- c. If the nationality is not verified or verifiable within the four hours, the requested Party shall, through its Competent Authority:
 - i. nevertheless stipulate that it does not object to the boarding and search by the Security Force Officials of the requesting Party; or
 - ii. refute the claim of the suspect vessel to its nationality.
- d. Either Party, consistent with the other provisions of this Agreement, may subject its authorization under this paragraph to conditions, including obtaining additional information from the requesting Party, and conditions relating to responsibility for and the extent of measures to be taken. Information to be provided in response to such a request shall be exchanged in a timely manner by the Competent Authorities; however, the requesting Party may notify the requested Party if it is providing additional information through established information sharing channels.
- e. Notification to the Master. Prior to the boarding being conducted, the flag State may, in coordination with the requesting Party, transmit to the Master of the suspect vessel notice that it has authorized the requesting Party to board the vessel.

4. Right of Visit. Notwithstanding the foregoing paragraphs of this Article, the Security Force Officials of one Party ("the first Party") are authorized to board suspect vessels claiming nationality in the other Party that are not flying the flag of the other Party, not displaying any marks of its registration or

nationality, and claiming to have no documentation on board the vessel, for the purpose of locating and examining the vessel's documentation. If documentation or other physical evidence of nationality is located, the foregoing paragraphs of this Article apply. If no documentation or other physical evidence of nationality is available, the other Party will not object to the first Party assimilating the vessel to a ship without nationality consistent with international law.

5. Use of Force. The authorization to board, search and detain includes the authority to use force in full compliance with the provisions of Article 9 of this Agreement.

6. Shipboarding Otherwise in Accordance with International Law. This Agreement does not limit the right of either Party to conduct boardings of vessels or other activities consistent with international law whether based, *inter alia*, on the right of visit, the rendering of assistance to persons, vessels, and property in distress or peril, or an authorization from the Flag or Coastal State, or other appropriate bases in international law.

Article 5

Exercise of Jurisdiction over Detained Vessels, as well as Items and Persons on Board

1. Jurisdiction of the Parties. In all cases covered by Article 4 concerning the vessels of a Party ("the flag State") located in international waters, jurisdiction rests with the flag State over a detained vessel, cargo or other items and persons on board (including seizure, forfeiture, arrest, and prosecution). However, the flag State may, subject to its Constitution and laws, consent to the exercise of jurisdiction by the other Party in accordance with the provisions of this Agreement.

2. Jurisdiction in the contiguous zone of a Party. In a zone contiguous to its territorial sea, described as the contiguous zone, a Party may exercise the control necessary, *inter alia*, to prevent the infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea. In all cases not covered by Article 4 involving the vessel of one Party that arise in the contiguous zone of the other Party and in which both Parties have authority to board in accordance with their respective jurisdictions—

- a. except as provided in subparagraph (b), the Party which conducts the boarding shall have the right to exercise its authorized jurisdiction;
- b. in cases involving suspect vessels fleeing from the territorial sea of a Party in which that Party has the authority to board and to exercise jurisdiction, that Party shall have the right to exercise its authorized jurisdiction.

3. Disposition Instructions. Consultations as to the exercise of jurisdiction pursuant to paragraphs 1 and 2 of this Article shall be undertaken between the Competent Authorities without delay.

4. Form of waiver. Where permitted by its Constitution and laws, waiver of jurisdiction may be granted verbally, but as soon as possible it shall be recorded in a written note from the Competent Authority and be processed through the appropriate diplomatic channel, without prejudice to the immediate exercise of jurisdiction over the suspect vessel by the other Party.

Article 6

Exchange of Information and Notification of Results of Actions of the Security Forces

1. Model Forms. The Parties shall use the model forms appended to this Agreement for communications pursuant to this Agreement, except as otherwise provided in this Agreement. The Competent Authorities of the Parties may, by mutual agreement, amend or replace in accordance with their laws the model forms annexed to this Agreement.

2. Exchange of Operational Information. The Competent Authorities of both Parties shall endeavor to exchange operational information on the detection and location of suspect vessels and shall maintain communication with each other as necessary to carry out the purpose of this Agreement.

3. Protection of classified information and material. Each Party shall protect classified information and material from unauthorized disclosure at all times in accordance with such requirements as the requesting Party may specify or as otherwise agreed by the Parties.

4. Notification of Results. A Party conducting a boarding and search pursuant to this Agreement shall notify the other Party of the results thereof through their Competent Authorities, promptly but in any case no later than ten days following the conclusion of the boarding and search. Such notification shall be effected through the Competent Authorities of the Parties.

5. Status Reports. Each Party, in compliance with its laws, shall timely report to the other Party, through their Competent Authorities, on the status of all investigations, prosecutions and judicial proceedings and other actions and processes, arising out of the application of this Agreement.

Article 7

Conduct of Security Force Officials

1. Compliance with Law and Practices. Each Party shall ensure that its Security Force Officials, when conducting boardings and searches pursuant to this Agreement, act in accordance with its applicable national laws and policies and consistent with international law and accepted international practices.

2. Boarding and Search Teams

- a. Boardings and searches pursuant to this Agreement shall be carried out by Security Force Officials from Security Force vessels as may be authorized on a case-by-case basis.
- b. Neither Party shall be required to authorize a boarding from a vessel or aircraft of a third State that it would consider adverse to its interests.
- c. The boarding and search teams may carry arms.

Article 8
Safeguards

1. Where a Party takes measures against a vessel in accordance with this Agreement, it shall:

- a. take due account of the need not to endanger the safety of life at sea;
- b. take due account of the safety and security of the vessel and its cargo;
- c. not prejudice the national, commercial or legal interests of the Flag State;
- d. ensure, within available means, that any measure taken with regard to the vessel is *environmentally sound under the circumstances*;
- e. ensure that persons on board are afforded the protections, rights and guarantees provided by international law and the boarding State's law and regulations;
- f. ensure that the master of the vessel is, or has been, afforded at any time the opportunity to contact the vessel's Flag State, and, subject to preserving the safety and security of operations, is, or has been, afforded the opportunity to contact the vessel's owner or manager.

2. All reasonable efforts shall be taken to avoid a vessel being unduly detained or delayed.

Article 9
Use of Force

1. All uses of force pursuant to this Agreement shall be in strict accordance with the applicable laws and policies of the Party conducting the boarding and with applicable international law.

2. Each Party shall avoid the use of force except when and to the degree necessary to ensure the safety of Security Force vessels and officials, and where Security Force Officials are obstructed in the execution of their duties.

3. Any use of force pursuant to this Article shall not exceed the minimum degree of force that is necessary, proportional and reasonable in the circumstances.

4. Boarding and search teams and Security Force vessels have the inherent right to use all available means to apply that force reasonably necessary to defend themselves or others from physical harm.

5. Any use of force by the Party conducting a boarding and search pursuant to this Agreement shall be immediately reported with all necessary details to the Competent Authority of the other Party.

Article 10

Exchange and Knowledge of Laws and Policies of Other Party

1. Exchange of Information. To facilitate implementation of this Agreement, each Party, shall endeavor to ensure the other Party is appropriately informed of its respective applicable laws and policies, particularly those pertaining to the use of force.

2. Knowledge. Each Party shall endeavor to ensure that its Security Force Officials are knowledgeable concerning the applicable laws and policies in accordance with this Agreement.

Article 11

Points of Contact

1. Information. Each Party shall inform the other Party through their Competent Authorities, and keep current, the points of contact for communication, decision and instructions under Articles 4 and 5, and notifications under Articles 6 and 10, of this Agreement.

2. Availability. The Parties shall ensure that the points of contact have the capability to receive, process and respond to requests and reports at any time.

Article 12

Disposition of Seized Property

1. Except as otherwise agreed by the Parties, cargo and other items seized in consequence of operations undertaken onboard vessels subject to the jurisdiction of a Party pursuant to this Agreement, shall be disposed of by that Party in accordance with its laws.

2. The Party exercising jurisdiction may, in any case, transfer forfeited cargo and other items or proceeds of their sale to the other Party. Each transfer